Service Date: April 28, 2005

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER of the Application of	)	
NorthWestern Energy for Advanced	)	UTILITY DIVISION
Approval of Certain Proposed Electricity	)	
Power Supply Purchase Agreements	)	DOCKET NO. 2005.2.14

DISSENT OF VICE CHAIRMAN
BRADLEY A. MOLNAR TO FINAL ORDER NO. 6633b*

Evidence given by NorthWestern Energy (NWE) is compelling and the majority position defensible, I believe, only if the consideration is whether this is a good wind project or not. Indeed many of the evidences presented by NWE, and references by others are specifically comparisons to other wind projects. This, in my opinion, is where we lost focus then ignored rule and law.

Montana Code Annotated (MCA) 69-8-419(2)(a) charges that the default supply portfolio be composed of "***reliable*** services at the ***lowest long-term total cost***."

The only way a wind product can be ***reliable*** is if it is firmed through ancillary services; this project is pointedly not. Indeed Administrative Rules of Montana (ARM) 38.5.8204(1)(c) specifically addresses this issue, "…rate design that most efficiently supplies ***firm***, ***full*** electricity supply."

The Montana Consumer Counsel (MCC) intervened in this docket and specifically stated that a cap on firming services, not to exceed $5 per MWh, was necessary to insure that preference was not improperly being given to this wind project to the detriment of consumers. The MCC recommendation was in keeping with the law and their constitutional charge, ARTICLE XIII Section 2, which is "representing consumer interests" in Montana. By not accepting the MCC referenced cap, preference was given to

* **Commissioner Molnar's signature, indicating his dissent, is attached to Order No. 6633b. This dissent should be attached to that Order.**

the wind project in violation of MCA 69-8-419(d) which requires an "open, ***fair,*** and ***competitive,*** procurement process." Certainly an open ended contract is neither fair nor competitive against rival offers that are firm, reliable, predictable, and similar for long term total cost as required by Montana law.

Staff inferred, and the Commission majority agreed, that the cost of firming was negligible so should not be considered. If it's negligible why not include it? No consideration was given to the cost of not contracting for ancillary services, especially balancing services, to determine the "used and useful components" of this wind project. For example, assuming a night time base load of 300MWh and a demand of only 290MWh, Montana consumers pay for the unneeded 10MWh if a willing buyer can't be found. An acceptable risk to receive the base load cost. If at the same time the wind is blowing hard in Judith Gap the wind will uncontrollably generate an additional 150 MWh of excess electricity. We will then have to charge Montana consumers for the unsold or undersold 150MWh of electricity even though they will not have used it. An unnecessary risk.

In this example, the same number of used and useful wind generated MWhs will cost $54, not $32. During peak hours waste is significantly less likely (and profit more probable if production is underestimated), but the need for ancillary services and costly hour by hour trades will be more necessary than with a slice product. When wind generated electricity is curtailed, or the system trips off, Montana consumers will pay for the electricity that would have been generated. This may benefit a wealthy Chicago family, but Montana families and employers will be abused.

The fact that we must pay for all wind generated electricity, whether used or not, is totally glossed over and not accounted for in any projections, especially the twenty-eight cents per month figure. The cost of having a wind generated product as the core of our ramping and peaking needs, with all of its uncertainty (testimony was received that "day before wind predictions" were unreliable), and the increased cost of hourly market back up was never quantified. Perhaps if we had taken more time…

Also, I believe that it was an error to accept calculations using the estimate of $5 MWh to balance the loads inherent with a wind project in a service area as restricted as ours. No evidence was offered that $5 MWh was a defendable estimate based on similar projects with similar transmission bottlenecks, limited generation suppliers, and small customer base.

The only ancillary costs or balancing services testified about were from Bonneville Power Authority. Their expert witness testified that balancing services could be contracted for about $5 per MWh plus $4 MWh for transportation. This $9 MWh is probably the best deal possible, but BPA has contracted for this service with only one entity in the entire northwest region and then only for one year. They testified that they may not even renew that contract. The $9 MWh figure may not even be available. When I specifically asked Pat Corcoran of NWE if there was an open and robust market for "firming services" his answer was non responsive. When pressed he confirmed that third party suppliers were ***assumed*** to be ***too expensive***. Mr. Corcoran felt that NWE could possibly provide more cost effective ancillary services but that he could not give a price. His solution was to offer that the PSC should look favorably on a future re-re-re-examination of NWE's mothballed gas plant south of Great Falls.

Firming electricity generated by natural gas is very expensive ($50 MWh + is common) and also drives up the cost of home heating. The decision to bifurcate the decisions on firming and basic procurement is a fatal flaw and reduces future negotiating power for ancillary services. I feel that we are being boxed into accepting firming services from the Basin Creek plant (it was partially justified as a wind firming source when accepted) and/or from the MMI plant which, I believe, needs a contract to find a home thus providing the revenue necessary to fund corporate bonuses outside the bankruptcy limitations.

Leaving a major component up to future offerings by NWE, refusing to cap the contract, and a willingness to acquiesce to the unknown (to give credence to a fabled deadline), violates not only the aforementioned laws and rules but also MCA 69-8-419(c) which identifies the legal necessity to "manage and mitigate risks."

Because, by law, the PSC can only look at offerings brought forward by NorthWestern Energy, they are totally in the driver's seat to promote the use of gas fired

back up and profit enormously by the transportation and distribution charges. Montana consumers will take a double hit, and NWE's shareholders will have profited not by transmission and distribution services, but by manipulation.

Various Commission members have stated we should passively rely on dynamic scheduling and very expensive spinning reserves, and non spinning reserves, to firm the wind product. Not only is scheduling the wind an undiscovered art but the only applicable conversation about load balancing was by Elliot Mainzer of the BPA. The BPA is very bullish on wind power but, again, will not offer a contract to match the life of this contract, has never offered a contract over one year, has not offered NWE any contract, and refused to speculate after 2011 (when BPA will stop serving eastern Montana coops due to a lack of available power). On-going drought conditions and federal fisheries policies do not bode well for a load balancing contract with BPA. Therefore this decision has generated unnecessary economic risk for Montana consumers.

Contrary to Mr. Corcoran's verbal testimony, NWE admits (PPL-055) that their internal costs to integrate the wind power will not be lower than the offerings of BPA or Pacific Corp. This higher, admitted unknown, cost is ignored in the analysis. The unnecessary shifting of unknown costs to consumers and away from profiteers is not defensible and would be neither contemplated nor tolerated for traditional, more reliable, forms of energy. Nor is it allowed by law or rule. According to exhibit PPL-057, the proposed cost of wind integration is a work in progress and was as such not given to the Commission. This does not allow "a fair, open, and competitive procurement process" as identified in MCA 69-8-419(2)(c). Certainly the Commission not being able to access pricing information, even with the availability of proprietary status, flaunts the standards required to be considered "open" and does not allow the Commission to make fact based decisions mandated by already referenced rule and law.

Montana law plainly mandates the inclusion into our default supply only of energy products that can demonstrate the "***lowest long term total costs***" MCA 69-8-419(2)(d). The decision to not accept MCC's recommendation and cap the firming costs means we have no idea what the costs will be on day one or any other of the seven thousand three hundred days of this contract. A plain violation.

Rule 38.5.8212 allows the DSU to withhold the specific ranking method to select preferred bids. This rule is in violation of 69-8-419(2)(d) for it takes away the necessary transparency to be able to protest if preferential treatment is being given. Information of this nature is commonly distributed in private and federal RFPs. No logical reason to have kept this information secret was offered. This is a significant flaw in the process and casts doubt on the fairness of the outcome. The decision to keep the information secret was arbitrary on the part of NWE.

MCA 69-8-210 provides that customers shall be ***allowed*** to purchase electricity from environmentally preferred generation sources. NWE has advertised such a product. One tenth of one percent of their customers are willing to pay extra for "green power." The other 99 9/10% are not. By ignoring the MCC determination of the need to cap the costs of ancillary services at $5 MWh, so as to not give preference to this wind project over competitive products (slice products), customers in the NWE service area were denied this guaranteed right of choice. At least part of the problem comes from previous commissions that wrote the rules of procurement and heavily slanted the rules to favor the mandating of "green energy," thereby improperly expanding the law. This specifically violates MCA 69-8-403(6), "The commission shall promulgate rules that ***protect consumers***, distribution services providers, and ***electricity suppliers*** from ***anticompetitive and abusive*** practices."

Conclusion

We will never know if the inclusion of this project was the best possible for Montana consumers or not. Comparisons to choices rejected will be unfruitful. We do know that even if this project were undeniably good that current law and rule do not allow unreliable forms of generation and unlimited costs into the portfolio. Rather, such supplies (and risks involved) are relegated to speculators. Perhaps the law and rules need to be changed to allow random production products to be included. Until that time this offering is illegal, which is regrettable for properly bundled it could possibly have been a positive addition to Montana's portfolio for electricity supply.

I firmly believe that appealing this decision to the Montana Public Service Commission would have been fruitless. However, as a public service PPL should have challenged the order rather than turning to political expediency. In the same vein the

Montana Consumer Counsel is charged with protecting the consumers of Montana and should challenge the inclusion of this incomplete offering in district court.

Had ancillary, and especially load balancing services, been accounted for, I believe this project may have stood on its own merit.